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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,293	11/26/2003	Ming-Kuei Lin	BHT-3226-48	5486
7590 07/11/2005 TROXELL LAW OFFICE PLLC SUITE 1404 5205 LEESBURG PIKE FALLS CHURCH, VA 22041			EXAMINER MAY, ROBERT J	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,293

Applicant(s)

LIN, MING-KUEI

Examiner

Robert May

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-6 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/26/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 4-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Anthony (US Pat. 2,554,516) over Schur (US Pat. 2,611,214).

In regard to Claims 1-2, & 4, Anthony discloses all of the claimed elements except for a light emitting diodes mounted to the flexible lamp holder, power supply, button, and a translucent upper housing. However, Schur discloses in Figure 1 a ball shaped self-righting toy with lamp (37) disposed within a translucent plastic upper housing (13) (Col. 3, Lines 10-16) with a power supply or battery (23) and switch or pole (38) protruding through the bottom housing of the toy allowing the lamps to become energized when the toy is rocked. It would be obvious to one of ordinary skill in the art to

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modify Anthony with a lamp 37 attached to the flexible member of Anthony, a battery 23 for providing power, a switch 38, and translucent upper housing 13 of Schur in order to provide a toy that could be illuminated and enjoyed in a dark environment.

Furthermore, it would be generally obvious to one of ordinary skill to use a plurality of light emitting diodes (LEDs) because it is generally known by one of ordinary skill that LEDs are power efficient and small. Therefore it would be obvious to one of ordinary skill in the art to modify Anthony by adding a plurality of LEDs to the top of flexible member (Anthony 18) with the switch 38, translucent upper housing 13, and 23 in order to provide a toy that could be enjoyed in a dark environment.

In regard to Claims 5-6, it would be obvious to modify Anthony by having the LEDs emit light in different directions because it would allow for a uniformly illuminated upper housing for the toy and furthermore having multi colored LEDs would provide for a more colorful enjoyable toy. Therefore, it would be obvious to one of ordinary skill in the art to modify Anthony with the plurality of multi colored LEDs in order to provide a uniformly lit colorful toy.

Allowable Subject Matter

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach a swing lamp where the lower housing is connected to the top of an elastic element where the lower end of the elastic element is connected to a supporting base.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stafford (US Pat. 1,228,615), and Messana (US Pat. 5,490,051) disclose a self-righting apparatus with a light element. Kadotsuji (JP 2000102676 A) discloses a ball shaped toy, which is self-righting with a figure that appears and reappears from opening on outers surface of toy when moved. Maleyko (US Pat.

5,054,778) discloses a lighted ball with LEDs disposed internal to ball housing with an external surface disposed switch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert May whose telephone number is (571) 272-5919. The examiner can normally be reached between 9 am– 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval PAIR system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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